

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

PHIL TOMPKINS, *et al.*, derivatively on  
behalf of K-V Pharmaceutical Company,

Plaintiffs,

v.

GREGORY J. DIVIS, JR., *et al.*,

Defendants,

-and-

K-V PHARMACEUTICAL COMPANY,

Nominal Defendant.

**Case No.: 4:11CV-1982 JAR**

**KV DEFENDANTS' MOTION TO DISMISS**

COME NOW Nominal Defendant K-V Pharmaceutical Company ("KV" or "Company"), Defendants Gregory J. Divis, Jr. and Scott Goedeke, and Defendants David S. Hermelin, Joseph D. Lehrer, Mark A. Dow, Ana I. Stancic, Gregory S. Bentley, Robert E. Baldini, and David Sidransky (collectively "Director Defendants" and, collectively with KV, Divis, and Goedeke, "KV Defendants"), pursuant to Fed. R. Civ. P. 23.1, and move the Court to dismiss Plaintiffs' Amended Complaint for lack of standing. First, Plaintiffs have failed to allege that they were stockholders of KV at the time of the actions about which they complain, which requires dismissal of the Complaint. Fed. R. Civ. P. 23.1(b)(1). Second, Plaintiffs have failed to state with particularity that demand on KV's Board of Directors would be futile, which deprives them of standing to sue on the Company's behalf. Fed. R. Civ. P. 23.1(b)(3). Alternatively, the KV Defendants request that the Court stay the proceedings in this action pending the resolution of

the securities litigation currently being pursued in this Court, as proceeding with this litigation at this time would not be in the best interests of the Company, the claims in this case are dependent upon the resolution of the securities litigation, and a stay would avoid piecemeal litigation and conserve resources. In support of this Motion, the KV Defendants have filed herewith and incorporate herein by reference their Memorandum of Points and Authorities in Support of their Motion to Dismiss.

WHEREFORE, KV Defendants respectfully request that the Court enter an order dismissing Plaintiffs' Amended Complaint with prejudice and for such other and further relief as this Court deems just and proper.

Dated: March 12, 2012

Respectfully submitted,

/s/ Robert P. Berry  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served via the Court's electronic filing system on this 12<sup>th</sup> day of March, 2012, on all counsel of record.

/s/ Robert P. Berry  
Robert P. Berry